

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM HELMER,

Plaintiff,

Civil No. 2:09-11697

HONORABLE PATRICK J. DUGGAN

v.

BRIAN GUEST, KATHLEEN
SOLOMON, RONALD NIGHTINGALE,
DAVE STENZEL, KEVIN GRACE,
ED POKRZYWNICKI, and OSCODA COUNTY,

Defendants,

**OPINION AND ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S
APPEAL AND OBJECTION TO ORDER DENYING PLAINTIFF'S MOTION TO
AMEND WITNESS LIST**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on September 28, 2010 .

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On May 10, 2009, Plaintiff William G. Helmer ("Plaintiff"), a state prisoner currently confined at the Bellamy Creek Correctional Facility in Ionia, Michigan, filed a *pro se* civil rights complaint pursuant to 28 U.S.C. § 1983 against Defendants Brian Guest and Kathleen Solomon. On September 29, 2009, this Court entered an order referring the matter to Magistrate Judge Mona K. Majzoub for all pretrial matters. On March 10, 2010, Plaintiff filed a motion to amend his witness list. Magistrate Judge Majzoub denied the motion on June 2, 2010. Presently before the Court is Plaintiff's

appeal and objection to that decision, filed July 14, 2010. For the reasons that follow, the Court denies without prejudice Plaintiff's appeal and objections.

Defendants Guest and Solomon have dispositive motions currently pending before Magistrate Judge Majzoub. On April 9, 2010 Defendant Guest filed a motion for summary judgment with respect to Plaintiff's claim alleging excessive force. (Doc. 41.) Subsequent to that date, Plaintiff's previously dismissed claim alleging that Defendants Guest and Solomon used false information and testimony in his criminal case was reinstated. (Doc. 59.) Defendants Guest and Solomon filed motions to dismiss or for summary judgment with respect to the reinstated claim on July 28 and August 24, 2010, respectively. (Docs. 71 and 73.) If Defendants prevail on their motions, the issue of whether Plaintiff should be able to amend his witness list will become moot.

Moreover, on May 10, 2010, Plaintiff filed a motion to amend his complaint. (Doc. 49.) On September 7, 2010, Magistrate Judge Majzoub granted in part Plaintiff's motion in that she allowed Plaintiff to add claims against the remaining Defendants identified in the caption. (Doc. 77.) In her decision, Magistrate Judge Majzoub directed that the amended complaint be served on the newly added defendants. At such time as these defendants respond to the amended complaint, a new scheduling order may have to be entered in this matter and the parties may need to file new witness lists, but such additional witnesses shall be only those necessitated by the reinstated claim or the amended complaint.

Accordingly,

IT IS ORDERED, that Plaintiff's appeal and objection to Magistrate Judge Majzoub's June 2, 2010 decision denying his motion to amend his witness list is **DENIED WITHOUT PREJUDICE**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to:
William Helmer, #140677
Bellamy Creek Correctional Facility
1727 W. Bluewater Highway
Ionia, MI 48846

D. Randall Gilmer, Esq.
G. Gus Morris, Esq.